

# The legality of exploring and exploiting natural resources in Western Sahara

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First of all, I wish to thank the Ministry of International Relations and Cooperation and the University of Pretoria very much for inviting me to participate in this Conference.

Frankly speaking, I was somewhat hesitant to accept the invitation. In the past, when I have received invitations to other international meetings concerning Western Sahara, I have declined. The reason for not accepting those invitations is that, in January 2002, I delivered a legal opinion relating to Western Sahara to the United Nations Security Council. It is important that this opinion speaks for itself. Another reason is that I would not wish to engage in discussions that, for reasons of sentiment, might hamper the efforts by the United Nations to achieve a fair settlement with respect to the status of Western Sahara.

However, since the programme of this Conference in Pretoria promised very serious discussions in which the issues relating to Western Sahara would be examined from different perspectives, I decided to accept the invitation.<sup>1</sup> This would not only allow me to participate in an interesting Conference, it would also put me in a position to explain how requests for legal opinions are dealt with in the United Nations Office of Legal Affairs, and to say a few words about the opinion that I delivered to the Security Council.

It seems that the opinion has been well understood by most, and many concerned have drawn the appropriate conclusions. However, there are those who have construed it very differently from its meaning. In some cases, the interpretation bears clear evidence of a very special underlying interest.

My first duty, however, is to inform you that I have retired from the United Nations and from public service in my own country, Sweden. I am therefore now speaking in my personal capacity only.

In addition, I have no other interest in this matter than that of the rule of law, and that the member states of the United Nations should respect the norms that the Organisation itself has established. So, in case you find my remarks leading in a particular direction, it is simply an expression of my siding with the law to the best of my understanding.

I have been asked to address 'The legality of exploring and exploiting natural resources in Western Sahara'. This I will do first by reviewing the legal opinion I delivered in January 2002 and how it was conceived. I will then make a few comments with regard to some of the reactions it has provoked. This will be followed by conclusions from the legal opinion in relation to other natural resources in Western Sahara. I will also look to the future, and in particular, the role that the business community might play by acting in accordance with what is commonly known as 'corporate social responsibility'. I will conclude with a few remarks on the overriding topic of our Conference – Multilateralism and International Law.

## Mineral resources in Western Sahara

With respect to the legal opinion, you will note that I delivered it in my capacity as Under-Secretary-General for Legal Affairs and the Legal Counsel of the United Nations. The opinion was transmitted to the President of the Security Council in a letter dated 29 January 2002.<sup>2</sup>

What the members of the Council had asked for, was my opinion on:

the legality in the context of international law, including relevant resolutions of the Security Council and the General Assembly of the United Nations, and agreements concerning Western Sahara, of actions allegedly taken by the Moroccan authorities consisting in the offering and signing of contracts with foreign companies for the exploration of mineral resources in Western Sahara.

As a point of departure it is important to note that when the Legal Counsel is asked to deliver an opinion of this kind, he should be very careful to confine himself exactly to the question(s) asked by the competent United Nations organ.

Furthermore, the elaboration of an opinion of this kind is not something that the Legal Counsel does in splendid isolation in his

office. On the contrary, although the responsibility for the opinion rests squarely with the Legal Counsel, the exercise is a team effort in which the task is assigned to members of the Office of Legal Affairs, in the present case, members of the Office of the Legal Counsel.

The first issue to examine is whether a legal opinion has been delivered on the same or a similar issue in the past. If that is the case, that opinion would be carefully studied on the basic assumption that an opinion already given by the Legal Counsel should be upheld; Member States must be able to rely on legal advice, and there must be consistency in the way in which such advice is given. But the circumstances could also lead to a different conclusion. In such a case the Legal Counsel would carefully explain why his opinion differs from what he or one of his predecessors has stated in the past.

In the actual case, there was no such precedent. As a matter of fact, I was quite surprised to receive the question from the Security Council. My experience from working with the Council is that its members rely mainly on legal advice provided either by their own lawyers in their Missions to the United Nations in New York, or by the legal advisers of their Ministries of Foreign Affairs.

I know from conversations with colleagues from the Missions in New York that the Council is somewhat hesitant to ask legal opinions from the Legal Counsel for the simple reason that they believe that this would be giving tremendous 'power' to a single international civil servant, albeit a person at the level of Under-Secretary-General. It is obvious that this hesitation would be commensurate with the political sensitivity of the subject matter.

To illustrate what I have just said, this is probably the explanation why I was not asked to give a legal opinion on the system for the listing of terrorist suspects implemented under Security Council resolution 1267 (1999). Had I been asked to give a legal opinion on this matter, I would certainly have opined that adopting a system of this kind without offering those affected access to a judicial institution as a last instance, would violate international human rights standards. I knew that this is so from personal experiences defending Sweden before the European Court of Human Rights for many years.<sup>3</sup>

So, my immediate reaction when I was asked to give a legal opinion in a matter as sensitive as that of Western Sahara, was that it represented a very unusual step by the Council.

As I have just said, a first analysis made it clear that in this particular case there was no precedent. Therefore, we had to start making an analysis afresh.

In order to be able to answer the question put to me, I needed assistance from the government of Morocco. The government provided me with information on two contracts concluded in October 2001. They concerned oil-reconnaissance and evaluation activities in areas offshore of Western Sahara. One of the contracts was between the Moroccan *Office National de Recherches et d'Exploitations Pétrolières* (ONAREP) and the United States oil company, Kerr McGee du Maroc Ltd. The other was between ONAREP and the French oil company, TotalFinaElf E&P Maroc.

The contracts were concluded for an initial period of twelve months and contained standard options for the relinquishing of the rights under the contract or its continuation, including an option for future oil contracts in the areas in question or parts of these areas.

To determine the legality of the contracts concluded by Morocco offshore of Western Sahara, it was necessary to analyse the status of the territory of Western Sahara, and the status of Morocco in relation to the territory. Furthermore, it was necessary to analyse the principles of international law governing mineral resource activities in Non-Self-Governing Territories. In this analysis, it was also necessary to examine provisions of the Charter of the United Nations, General Assembly resolutions pertaining to decolonisation in general, and economic activities in Non-Self-Governing Territories, in particular. Needless to say, we had also to analyse agreements concerning the status of Western Sahara with great care.

I will not here venture into the history of Western Sahara or the status of Western Sahara under Moroccan administration. This is available in the legal opinion and in other material available at this Conference.

With respect to the law applicable to mineral resource activities in Non-Self-Governing Territories, an analysis was made of article 73 of the United Nations Charter. The conclusion was that the interests

of the inhabitants of these territories are paramount. The task of the administering powers over such territories is seen as a 'sacred trust'.

Of particular interest were the General Assembly resolutions relating to the question of the implementation of the Declaration on the Granting of Independence to Colonial Countries and Peoples. These resolutions called upon the administering powers to ensure that all economic activities in the Non-Self-Governing Territories under their administration did not adversely affect the interests of the peoples of such territories, but were instead directed towards assisting them in the exercise of their right to self-determination. These resolutions also contained provisions designed to protect the 'inalienable rights' of the peoples of those territories to their natural resources, and to establish and maintain control over the future development of those resources. The need to protect the peoples of Non-Self-Governing Territories from exploitation and plundering by foreign economic interests, was also addressed.

A distinction was made between economic activities that are detrimental to the peoples of these territories, and those directed to benefit them. It was recognised that there was a value in foreign economic investment undertaken in collaboration with the peoples of the Non-Self-Governing Territories and in accordance with their wishes, in order to make a valid contribution to the socio-economic development of the territories.

In the legal opinion it was also noted that the question of Western Sahara had been dealt with both by the General Assembly as a question of decolonisation, and by the Security Council as a question of peace and security. However, as the Security Council resolutions pertaining to the political process were not considered relevant to the legal regime applicable to mineral resource activities in Non-Self-Governing Territories, these resolutions were not dealt with in detail in the legal opinion.

Instead, the main issue identified was whether the principle of 'permanent sovereignty' prohibits *any* activities related to natural resources undertaken by an administering power in a Non-Self-Governing Territory, or only those which are undertaken in disregard of the needs, interests and benefits of the people of that territory.

An examination of the case law of the International Court of Justice did not provide much guidance. Neither did an examination of state practice. Of particular interest in this context, was the question of exploitation of uranium and other natural resources in Namibia by South Africa and a number of Western multinational corporations. This activity was considered illegal under Decree no 1 for the Protection of the Natural Resources of Namibia, enacted in 1974 by the United Nations Council for Namibia, and was condemned by the General Assembly.<sup>4</sup>

However, in considering this conclusion, due regard must be had to Security Council resolution 276 (1970) of 30 January 1970 in which the Council declared that the continued presence of South Africa in Namibia was illegal, and that, consequently, all acts taken by the government of South Africa were illegal and invalid.

The case of East Timor under the United Nations Transitional Administration in East Timor (UNTAET) was also examined. In this case the so-called Timor Gap Treaty relating to the exploration and exploitation of oil and natural gas deposits in the continental shelf, was fully operational and concessions had been granted in the Zone of Cooperation by Indonesia and Australia, respectively. UNTAET found that it was necessary to ensure the continuity of the practical arrangements of the Timor Gap Treaty for the duration of the United Nations administration. The mission, therefore, took the necessary legal steps to do so. On behalf of East Timor, UNTAET also negotiated a draft 'Timor Sea Arrangement' with Australia designed to replace the Timor Gap Treaty upon the independence of East Timor. For obvious reasons, during this process UNTAET consulted fully with representatives of the East Timorese people, who participated actively in the negotiations.

In applying an analogous analysis, the question became whether an administering power's mineral resource activities in a Non-Self-Governing Territory are illegal, as such, or only if conducted in disregard of the needs and interests of the people of that territory. An examination of the relevant provisions of the Charter of the United Nations, General Assembly resolutions, the case law of the International Court of Justice, and the practice of states, led me to the conclusion that such activities would be illegal only in the latter situation.

The examination of the relevant material with respect to the rights of administering powers led me to the general conclusion that recent state practice, though limited, was illustrative of an *opinio juris* on the part of both administering powers and third states: where resource exploitation activities are conducted in Non-Self-Governing Territories for the benefit of the peoples of those territories, on their behalf, or in consultation with their representatives, they are considered compatible with the Charter obligations of the administering power, and in conformity with the General Assembly resolutions and the principle of 'permanent sovereignty over natural resources' they enshrine.

Let me now quote the final paragraph of the legal opinion containing the conclusion:

The foregoing legal principles established in the practice of States and the United Nations pertain to economic activities in Non-Self-Governing Territories, in general, and mineral resource exploitation, in particular. It must be recognized, however, that in the present case, the contracts for oil reconnaissance and evaluation do not entail exploitation or the physical removal of the mineral resources, and no benefits have as of yet accrued. The conclusion is, therefore, that, while the specific contracts which are the subject of the Security Council's request are not in themselves illegal, if further exploration and exploitation activities were to proceed in disregard of the interests and wishes of the people of Western Sahara, they would be in violation of the principles of international law applicable to mineral resource activities in Non-Self-Governing Territories.

This is, I believe, a very clear statement, and I must confess that I am somewhat surprised that it has not been fully understood by all.

As regards the conclusions in my legal opinion, allow me first to reiterate that the Legal Counsel should confine himself to the question(s) asked. Let me also emphasise that a legal opinion is not an academic discourse. It is not for the Legal Counsel to engage in a discussion of the kind that one would find in an academic writing, where the author is free to express opinions on all kinds of issues that emerge in the course of an analysis.

Furthermore, in this particular case, the United Nations was – and is – engaged in a very delicate process in order to assist in finding a

just solution, respecting the international rules on self-determination. The opinion therefore had to be formulated with these aspects in mind.

Since it has been suggested that I ‘conveniently’ avoided addressing certain questions, or even engaged in ‘side-stepping’, it is important to make it clear that I was not asked to opine on the legal status of Western Sahara, even if it was necessary to analyse this question in the process.<sup>5</sup>

In preparing for the formulation of the opinion I had my collaborators look at several options. Among these was certainly the option of basing the opinion on the laws of occupation, all the more so as I had officers with particular expertise in this matter in my Office. However, in view of the way in which the United Nations had addressed the situation in Western Sahara, and the result of the various analyses, I came to the conclusion that the best way to form a basis for the legal opinion, was to make an analysis by analogy, taking as point of departure the competence of an administering power. Any limitation of the powers of such an entity acting in good faith, would certainly apply *a fortiori* to an entity that did not qualify as an administering power but *de facto* administered the territory.

In applying such an analysis, I had come to the conclusion that mineral resource activities in a Non-Self-Governing Territory by an administering power would be legal if conducted for the benefit of the peoples of such territory, on their behalf, or in consultation with their representatives. But, of course, this begs the question of how one can ascertain that these conditions have been met.

Applied to Western Sahara, the question was therefore whether these conditions had been fulfilled. As already mentioned, the analysis was made by analogy. Morocco does not have the status of administering power with respect to Western Sahara. This meant that the situation had to be examined with the utmost sensitivity.

If the principle is that the interests of the peoples of Non-Self-Governing Territories are paramount, and their well-being and development are the ‘sacred trust’ of their respective administering powers, this principle had to be applied with an extra margin in the present case. To what extent had the people of Western Sahara been



involved in the process of granting the contracts? I believe that the situation obtaining in the territory for so many years, and the fact that the question was raised in the Security Council, are a clear indication that there might be a problem here.

However, given how the two exploration contracts had been formulated, there was no basis for declaring them illegal as such, in particular as they were concerned only with exploration. A deeper examination of this question would have raised a host of issues that would have been completely unmanageable for the Office of Legal Affairs. Would the result of the activity be to the benefit of the people of Western Sahara? A true answer to this question would be difficult to find. Had representatives of the people of Western Sahara been consulted (the way the UN proceeded in East Timor)? An answer to this question would have raised the further question as to who is competent to represent the Saharawi. To engage in such an activity would probably have raised more legal questions than answers. As a matter of fact, it would have led the analysis of the question put by the Security Council astray, and might have been considered wholly inappropriate by the Council. What was known, and what could thus be included in the opinion, was that no extractions had occurred, and that no benefits had accrued.

Let me now explain that provision of legal advice requires, first, an interpretation of the letter and spirit of the question – the intent and expectation of the organ that seeks the advice and the context within which it is sought. In this case the Council had directed the Legal Counsel to analyse the question of the legality of granting the concessions in the context of international law and in the light of relevant Security Council and General Assembly resolutions and agreements concerning Western Sahara, all of which deal with different aspects of the question of the status of the territory and the powers to explore and exploit its resources – not the offering of contracts as such.

In directing the Legal Counsel to these sources of international law, the intention of the Council was to seek advice on the legality of the exploration and exploitation activities carried out in pursuance of the concessions, rather than the fact of granting them. Interpreting

the question as one pertaining to the legality of granting the concessions only, in disregard of the very activity they were designed to regulate, would defeat the purpose of request.

It was against this background that the opinion was formulated in such a manner that it would be crystal clear that Morocco had no authority to engage in exploration or exploitation of mineral resources in Western Sahara if this were done in disregard of the interests *and* wishes of the people of Western Sahara.

In short: There was no basis for declaring that the specific contracts were illegal in themselves. This appears from the final sentence of the opinion, carefully drafted and discussed within the Office of Legal Affairs. At the same time, the main clause of the final sentence constitutes a very clear message with respect to the legality of the activities in question:

[I]f further exploration and exploitation activities were to proceed in disregard of the interests and wishes of the people of Western Sahara, they would be in violation of the principles of international law applicable to mineral resource activities in Non-Self-Governing Territories.

From this sentence it follows that Morocco would have to engage in proper consultations with persons authorised to represent the people of Western Sahara before such activities would be allowed, as was done by the United Nations in East Timor.

Finally, I note that the comment has been made that there is no reference to the United Nations Convention on the Law of the Sea (UNCLOS) in the legal opinion.<sup>6</sup> In hindsight such a reference might have been appropriate. The only excuse that I can offer for not including such reference is that, based on my experiences as chairman of the Swedish delegation in the negotiation of three delimitation agreements with neighbouring states in the Baltic in the 1980s, I thought that it was so self-evident that the Convention would regulate the conditions in the sea off the coast of Western Sahara that it was not necessary to mention this specifically.

In a letter dated 2 April 2005, in which the Norwegian Petroleum Fund's Council on Ethics made recommendations to the Norwegian Ministry of Finance, the point is made that Resolution III, which is

annexed to UNCLOS, provides that article 77(1) of the Convention 'indicates that the rights related to the continental shelf, which in this case seems to belong to the people of Western Sahara, encompasses both exploring *and* exploiting'.

Referring to my opinion, the Council of Ethics drew the conclusion that there was a possible point of discrepancy between the legal framework concerning the law of the sea, and the legal opinion of the United Nations Legal Adviser. However, as is apparent from the last sentence of the legal opinion, there is no discrepancy whatsoever. As I have just explained, the purpose of the formulation of that sentence was precisely to make clear that it encompassed both exploring *and* exploiting. And this is what the sentence says in so many words.

## Other resources in Western Sahara

I come now to the second part of my presentation, namely what conclusions could be drawn from the legal opinion in relation to other resources in Western Sahara. Here I can be very brief. As it appears from the material analysed in the process of preparing the legal opinion, there is really not much room for making a distinction between mineral resources and other resources. Basically, this means that what is said in the legal opinion about mineral resources applies also to other resources.

It is interesting to note, as is mentioned in the legal opinion, that in 1975 the United Nations Visiting Mission to Spanish Sahara reported that at the time of the visit, four companies held prospecting concessions in offshore Spanish Sahara. In discussing the exploitation of phosphate deposits in the region of Bu Craa with Spanish officials, the Mission was told that the revenues expected to accrue would be used for the benefit of the territory, that Spain recognised the sovereignty of the Saharan population over the territory's natural resources, and that, apart from the return of its investment, Spain laid no claim to benefit from the proceeds.<sup>7</sup> The question is how this matter is dealt with by Morocco today.

A distinction can of course be made between renewable resources and non-renewable resources. A prominent renewable resource in Western Sahara is fishing. But I believe that it is fair to say that the law applicable to Non Self-Governing Territories does not make a distinction between different resources. They must all be used in the interests of the peoples in such territories. An important question is therefore how the revenues from the fishing in the waters off Western Sahara benefit the people of the territory.

As is well known, the European Commission concluded a Fisheries Partnership Agreement with Morocco in May 2006. That agreement applies in the 'Moroccan fishing zones', which is said to mean the waters falling within 'the sovereignty or jurisdiction of the Kingdom of Morocco' (art 2). I suppose that the expression 'or jurisdiction', which is also found in other agreements concluded by the Commission, refers to the Moroccan Exclusive Economic Zone. But it is obviously also used to indicate the waters belonging to Western Sahara. Under all circumstances there is no distinction made with respect to the waters adjacent to Western Sahara.

I must confess that I was quite taken aback when I learnt about this agreement. Without doubt, good relations between Europe and Morocco are of greatest importance. And there is also a mutual interest in the fisheries off the coast of western Africa being effectively managed and supervised. But I am sure that it would have been possible to find a formulation that would have satisfied both parties while at the same time respecting the legal regime applicable in the waters off Western Sahara. Any jurisdiction over those waters is subject to the limitations that flow from the rules on self-determination.

It has been suggested that the legal opinion I delivered in 2002 has been invoked by the European Commission in support of the Fisheries Partnership Agreement.<sup>8</sup> I do not know if this is true. But if it is, I find it incomprehensible that the Commission could find any such support in the legal opinion, unless, of course, it had established that the people of Western Sahara had been consulted, had accepted the agreement, and the manner in which the profits from the activity were to benefit them. However, an examination of the agreement leads to a different conclusion.

The Protocol to the Agreement refers to 'Morocco's resources' (art 4). With respect to the financial contribution, the Protocol provides that, subject to its article 6, 'the Moroccan authorities shall have full discretion regarding the use to which this financial contribution is put'. Article 6 prescribes in a long enumeration how the contribution should be allocated (art 2, par 6 and art 6, par 3). It is very difficult to identify the Saharawi in this enumeration. The Protocol also mentions 'the Moroccan fishing industry' (art 8). The Annex mentions the 'Moroccan Atlantic zone' (chapter III), 'Moroccan seamen' (chapter VII), and 'Moroccan ports' (chapters VIII B and X). In Appendix 4, the limits of Moroccan fishing zones are indicated. Apart from some small-scale fishing between 34° 18' N and 35° 48' N off the coast of Morocco, the rest is indicated by 'The entire Atlantic' (apart from a limited area) for tuna fishing, and 'South of 29° 00' for demersal fishing and industrial pelagic fishing. What does 'South of 29° 00' mean? A tiny area southwards to 27°-28° N where the waters of Western Sahara commence, or all the waters southwards to where the waters of Mauritania meet at about 21° N?

In all the pages of the Agreement there is not one word about the fact that Morocco's 'jurisdiction' is limited by the international rules on self-determination.

As a European, I feel embarrassed. Surely, one would expect Europe and the European Commission – most of all – to set an example by applying the highest possible international legal standards in matters of this nature.

Under all circumstances, I would have thought that it was obvious that an agreement of this kind that does not make a distinction between the waters adjacent to Western Sahara, and the waters adjacent to the territory of Morocco, would violate international law.

## The future – and the role that the business community might play

At this Conference it is for others to discuss how the question of Western Sahara could be solved in the future. I will, therefore, not venture into a discussion of this issue save to say that, irrespective of how the final solution emerges, there must be guarantees that effective sovereignty is

exercised over the territory. The experiences from other parts of the world where this is not done effectively are horrifying.

Let me now, instead, focus on enterprises and other entities that engage in business in Western Sahara. Even though the international law to which I have referred in the past may not be directly binding on private entities, this law nevertheless constitutes a foundation upon which such entities should base their ethical considerations.

I believe that it is common knowledge that many enterprises, including one of the companies that had been granted one of the contracts addressed by the legal opinion, have withdrawn from Western Sahara. I have also been informed that pension funds and similar institutions have, for ethical reasons, decided not to invest in companies that do business in Western Sahara on the basis of contracts granted by Morocco.

What we see here is the result of considerations based on corporate social responsibility (CSR). The honouring of CSR, is a movement that is becoming ever more widespread. This is something discussed within the International Bar Association and other organisations with which I presently interact. In discussions that I have had with chief corporate counsels of major companies engaged in international trade, it is evident that CSR is now very high on the agenda in corporate boardrooms around the world. It constitutes an important element in risk management.

It should be noted in this context, that in its 1975 Advisory Opinion, the International Court of Justice declared that it had found no 'legal ties of such a nature as might affect the application of resolution 1514 (XV) in the decolonisation of Western Sahara and, in particular, of the principle of self-determination through the free and genuine expression of the will of the peoples of the Territory'.<sup>10</sup>

It is unfortunate that, as regards Western Sahara, no solution as to the principles of self-determination has been reached – despite the considerable period that has elapsed since Spain relinquished its duties back in 1975. As a result of this impasse, how the business community acts might become a determining factor.

Who knows, perhaps the business community will, for ethical reasons, join hands in rejecting contracts offered by Morocco and relating to Western Sahara unless it is clear that these contracts are in conformity with international law. If this happens, CSR might

contribute to taking the process forward. In addition to the steps already taken in this regard by certain companies and funds, further initiatives may be taken within the framework of the Global Compact and at the invitation of organisations like Business Leaders Initiative on Human Rights and CSR Europe.<sup>11</sup>

## Concluding remarks

Let me now close by offering some general remarks about the main topic of the Conference: multilateralism and international law. Western Sahara is here referred to as a case study, and it is important that we do not lose sight of the overriding theme.

Basically, what the question boils down to is the rule of law in international relations. No states, and this includes the most powerful, can any longer act on their own. The only way forward in our globalised world is for states to cooperate and act together. In other words: multilateralism.

The most sophisticated way of doing this is through the law – be it customary law or treaty law. The system is based on the principle of *pacta sunt servanda* – agreements must be honoured.

The foremost treaty in this system is the Charter of the United Nations, negotiated in the wake of the Second World War. Based as it is on experiences drawn from two world wars, the Charter was designed ‘to save succeeding generations from the scourge of war’. An important provision in the Charter is article 103 that basically means that the Charter trumps other international agreements where there is a conflict between such agreements and the Charter.

All this means that international law must be upheld. Arguments are sometimes made that the ‘facts of life’, ‘geopolitical reality’, and ‘*realpolitik*’ require solutions that may not be in complete conformity with the law.

Perhaps it is my background in the judiciary of my country that always brings me back to the starting point: the state under the rule of law. By this I mean that the laws should be adopted in a democratic society respecting international human rights standards, and that these laws must be upheld.

This principle simply cannot stop at national borders. A rule-based international society is the only way forward if we hope to ensure that we do not fall back into the anarchy of the past.

One of the characteristics of a rule-based system is that disputes must be settled under the law. This means that not every party will be satisfied with the result. But that is in the nature of things, and must be accepted for the sake of the overriding interest that disputes are settled by peaceful means.

Clearly, laws can be outdated or prove not to serve the purpose for which they were enacted. But then such laws should be changed in accordance with constitutional rules and principles. They should not be manipulated, and certainly not be dictated by naked power.

This is where I see a need for change for the better in the future. As I have said many times before, I was very disappointed to see during my tenure at the United Nations, that prominent members of the Organisation sometimes violated the law – the very law they were set to guard – when it suited their interests.

Governments simply must join hands and work towards what is in their common interest and in the interest of all peoples of the world: a rule-based international system. If governments do not do this, all that will be left for coming generations, will be to argue over the ashes remaining after the inevitable confrontation is over.

## Endnotes

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<sup>1</sup>When I accepted the invitation, the program indicated the participation of an official representative of the Government of Morocco. However, at the Conference no such representative appeared which I very much regret.

<sup>2</sup>UN doc S/2002/161.

<sup>3</sup>See Corell 'Reflections on the Security Council and its mandate to maintain international peace and security' in Engdahl and Wrangé (eds) *Law at war – the law as it was and the law as it should be* (2008) at 68-72.

<sup>4</sup>Resolutions 36/51 of 24 November 1981 and 39/42 of 5 December 1984.

<sup>5</sup>See, eg, Brus and Chapaux 'International platform of jurists for East Timor' in Arts and Pinto Leite (eds) *International law and the question of Western Sahara* (2007).

<sup>6</sup>See Wilson in n 5 above.

<sup>7</sup>UN doc A/10023/Rev 1 at 52.



<sup>8</sup>According to an article in *EUobserver* on 9 March 2006 under the title 'Commission under fire over Morocco fisheries agreement', EU fisheries commissioner Joe Borg has stated that Morocco is the *de facto* administrator of Western Sahara and that *therefore* (my emphasis) the Commission proposal is in conformity with the legal opinion of the United Nations issued in January 2002. See <http://euobserver.com/9/21092>. If this reference is correct, I am afraid that Commissioner Borg has been ill advised.

<sup>9</sup>In the FAO statistics the minimum latitude for Western Sahara is 20° N and the maximum latitude is 27° N. Correspondingly, the minimum latitude for Morocco is 27° N. The fact that fishing takes place in the waters off Western Sahara was confirmed by Commissioner Borg in an answer to parliamentary questions on 9 April 2008. E-1073/2008. See <http://www.europarl.europa.eu/sides/getAllAnswers.do?reference=E-2008-1073&language=IT>.

<sup>10</sup>Western Sahara, Advisory Opinion *ICJ Reports* (1975) 12.

<sup>11</sup>Reference is made to the Global Compact with its four components (human rights, labour, environment and anti-corruption) at <http://www.unglobalcompact.org>. The Business Leaders Initiative on Human Rights can be found at <http://www.blihr.org/> and the web address to CSR Europe is <http://www.csreurope.org/>.